

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1397 Community Associations
SPONSOR(S): Civil Justice & Courts Policy Committee; Robaina and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2302

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	9 Y, 0 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This bill makes a number of changes to laws affecting condominiums, cooperatives, and homeowners associations. Significant changes in this bill include:

- Creates a state law enforcement group within the Department of Business and Professional Regulation to investigate financial crimes committed against condominium and cooperative associations. Funding is from the existing fees that such associations pay.
- Increases regulation of Community Association Managers.
- Repeals the requirement that condominium unit owners purchase individual insurance.
- Requires lenders of properties in condominium associations, cooperative associations, and homeowners associations to pay all past due assessments owed when a foreclosure case is filed in addition to some of the payments due after filing.
- Limits emergency powers.
- Moves condominium association director certification to after the election.
- Provides that only unit owners may serve on the board of administration.
- Substantially amends laws on cooperative associations to match the similar current laws on condominium associations. The jurisdiction of the Condominium Ombudsman is expanded to cover cooperative association matters also.
- Adopts some condominium law changes in homeowners associations.
- Directs OPPAGA to study whether homeowners associations should be regulated like condominium and cooperative associations are regulated.

The Department of Business and Professional Regulation estimates that it will require 24 new FTE's and expenditures of \$1,849,484 in FY 2009-2010 (\$1,517,790 Recurring, \$331,694 Non-recurring) payable from the Florida Condominiums, Timeshares and Mobile Homes Trust Fund, to fully implement the provisions of the bill as originally filed. The bill has since been amended in a manner that should lower that estimate. This bill does not appear to have a fiscal impact on local governments. This bill will result in significant private sector fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium and cooperative associations are governed internally by an association whose members are the owners of units within the association. Many, but not all, residential communities are similarly governed by a homeowners association made up of parcel owners. Collectively, these types of associations are referred to as community associations, and the separate statutes governing each type of association are similar in many ways. Condominium and cooperative associations pay \$4 per unit per year to the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes for state regulation of such associations. There is no state agency regulating homeowners associations and they pay no regulatory fee. Community associations employ community association managers, who are regulated by the Department of Business and Professional Regulation, Division of Professions. This bill amends laws various relating to community associations and Community Association Managers:

State Law Enforcement Group

Under current law, a criminal complaint of theft from a condominium association is referred to and investigated by local law enforcement. A local law enforcement agency has discretion to determine how to prioritize limited law enforcement resources. In some instances, this prioritization has led local law enforcement agencies to place a low priority on non-violent offenses such as theft and embezzlement from condominium and cooperative associations.

This bill amends s. 20.165, F.S., a statute creating and organizing the Department of Business and Professional Regulation, to authorize the department to employ investigators who are sworn law enforcement officers assigned to condominium and cooperative association offenses. These offenses will primarily be in the form of theft or embezzlement of association funds. The form for organization of these officers is modeled after the creation in the same statute of law enforcement officers for beverage law enforcement.

Regulation of Community Association Managers

One ground for discipline of a Community Association manager under current law requires the Department of Professional Regulation to prove that a Community Association Manager has committed "gross misconduct or gross negligence." This bill amends s. 468.436(2)(b)5., F.S., to remove the term "gross" from this standard, thus providing a lower standard of proof for discipline of a Community Association Manager.

Current law gives the Department of Business and Professional Regulation discretion on the appropriate discipline of a Community Association Manager. This bill removes some of that discretion by creating s. 468.436(6), F.S., to provide that, upon the fifth finding of guilt, or the third finding of guilt of the same offense, the license of a Community Association Manager must be revoked.

Insurance Law

In 2008, the Legislature substantially amended condominium insurance law at s. 718.111(11). The law substantially clarified the split of responsibility between associations and members, increased the required special assessment coverage, and mandated that unit owners purchase an individual insurance policy. This bill:

- Amends insurance law by creating s. 627.714, to require property insurance companies to provide a minimum of \$2,000 special assessment coverage when issuing a policy covering an individual condominium or cooperative property insurance policy. The coverage is excess over any other coverage. The date of loss is the date of the event leading to the insurable loss, not the date that the special assessment is imposed.
- Transfers responsibility for an air conditioning unit serving an individual unit and within a unit boundaries from association responsibility to unit owner responsibility.
- Corrects the references from the incorrect term of "hazard insurance" to the correct term of "property insurance" throughout s. 718.111(11), F.S.
- Repeals the requirement that an individual condominium unit owner purchase property insurance, together with the corresponding provisions that require a unit owner to give proof of insurance to the association.
- Matches cooperative law on property insurance to condominium law.

Access to Units

In a condominium, unit owners share a building. It is common in maintaining that building that the association must give access to the interior of units to contractors and workers. Section 718.111(5), F.S., gives an association a right of access to condominium units. This bill amends s. 718.111(5), F.S., to require in non-emergency situation that an association give a unit owner 24 hours notice that the association will be accessing the unit, requires that at least two persons be in attendance during the access, and requires that one of the two be an employee or director of the association.

Condominium Association Records

Current law requires that a condominium association maintain business records and requires the association to provide access to those records to members of the association. A 2008 change allows a condominium association to provide computer access to the records in lieu of access to the paper originals. This bill amends s. 718.111(12), F.S., to require that an association provide access to the paper originals and thus, where an association elects to provide computer access, the requesting member may choose.

Meetings of the Board of Administration

Current law allows the board of administration, by practice or within the bylaws, to set the time and place for meetings of the board. This bill creates s. 718.111(15), F.S., to:

- Require a board of administration to put the time and place of their regular meetings in the bylaws.
- Require that a bylaw be adopted by majority vote of the unit owners at the first meeting of the unit owners after October 1, 2009, setting the time and place of future meetings of the board of administration. Thereafter, that bylaw may only be amended by a majority vote of the unit owners.

- Require that regular meetings of the board of administration that are held on a weekday may not commence prior to 6:00 p.m.

Condominium Association Expenditures

The board of administration of an association authorizes the budget and expenditures of the association. This bill creates s. 718.111(16), F.S., to limit the authority of the board to make certain expenditures. The board may not:

- Make a political contribution.
- Donate to charity unless the association receives a direct benefit from the charity.
- Pay a lobbyist.

The directors of the association are jointly and severably liable to the association for any prohibited expenditure.

Condominium Association Assessment Meeting Notice

The board of administration of a condominium association sets the level of regular assessments necessary for the operation of the association, and may impose special assessments to pay for extraordinary or unexpected expenses. Current law requires that an association publish notice of any meeting of the board, and requires the notice of a meeting to consider assessments to contain the *estimated* amount of the assessment to be considered. This bill amends s. 718.112(2)(c), F.S., to require the meeting notice to contain the *proposed* assessment together with a percentage amount for possible cost overruns if such is in the contract.

Unit Owner Meetings

A condominium association is required to have at least an annual meeting of the unit owners at which directors are elected and other business of the association is discussed and may be voted on by the unit owners. This bill amends s. 718.112(2)(d), F.S., to add a requirement that unit owner meetings be conducted on the condominium property if facilities are available.

Terms of Office for Directors of Condominium Associations

A condominium association is governed by a board of administration. The members of the board of administration are elected by the members. Prior to 2008, there was no limit on how long the term of office of a director could be. In 2008, the Legislature amended condominium law to require that the term of office of all directors of condominium associations must be one year, although the members of the association could vote to allow terms of up to 2 years. Left unclear in last year's enactment was its effect on existing staggered terms. This bill amends s. 718.112(2)(d), F.S., to require that the terms of all directors expire at the first annual meeting of every association conducted after July 1, 2009, in every association in the state. At that next election, all seats on the board must be put up for election.

Amendment of Bylaws

Just as the declaration of condominium is analogous to a state or federal constitution, the bylaws of an association are analogous to the statutory laws of an association. Current law does not require any particular method for amendment of the bylaws of an association. This bill creates s. 718.112(2)(h)4., F.S. to provide that if the bylaws are amended by the directors, they must be noticed and discussed at two meetings before passage (analogous to two readings before the Legislature).

Suspension of Director for Theft

Current law at s. 718.112(2)(o), F.S., provides that a member of the board of administration is suspended from office by operation of law if the member is "charged" with a felony theft or embezzlement of association property. It has been argued that a mere accusation of any individual would suffice as being charged with the offense. This bill amends s. 718.112(2)(o), F.S., to provide that a member of the board of administration must be charged by indictment or information in the state or federal court system in order to trigger suspension by operation of law. Under state law, a person may

only be charged by indictment by a grand jury and a person may only be charged by information after review by the office of the state attorney. Federal law only utilizes indictment by grand jury.

Qualifications of Directors

Current law imposes numerous restrictions on who may serve as a director on the board of administration of a condominium association. This bill combines those qualifications into s. 718.112(2)(p), F.S., and amends those qualifications as follows:

Current law requires a person who intends to run for the office of director to file qualifying papers at least 40 days prior to the election. Included in the requirement to qualify is a requirement that a candidate must certify that he or she has read the condominium law and the administrative code provisions adopted by the Department of Business and Professional Regulation that interpret and further regulate condominium associations. This bill amends the certification requirement to limit the condominium statutes to be read, remove the requirement to read administrative code, add a requirement that the person read the governing documents of the association, change the requirement to only apply to the winner of an election, expand the requirement to cover appointed directors, and move the requirement to one that must be complied with within 30 days after election or appointment.¹ A director who fails to meet the requirement is removed from the board and a vacancy is created. If the division has to proceed against a director for false certification, the division may seek costs and fees against the removed director.

This bill also amends the duties of the Department of Business and Professional Regulation by creating subsection (3) of s. 718.501, F.S., to require the department to prepare a booklet containing all of the laws that a director is required to read under this provision.

General corporate law allows any competent adult to be elected as a member of the board of directors of a corporation, subject to restrictions in the articles of incorporation. This bill amends condominium law to require that, after turnover, only unit owners are qualified to be elected to the board of administration. This provision does not apply to a timeshare condominium association.

Condominium Association Borrowing

A condominium association, like any other entity, has the authority to borrow money to accomplish the purposes of the entity. Current law does not specifically limit borrowing by a condominium association, other than through the general fiduciary duty that the directors owe to the association. Unless the governing documents require otherwise, the board of administration may enter into a loan without a vote of the membership. This bill creates s 718.112(2)(q), F.S., to provide that borrowing money is a form of special assessment. The board of administration may not enter into a loan unless either the specific use of the funds is set forth in the meeting notice or the membership agrees on a two-thirds vote.

Hurricane Protection

Section 718.113(5), F.S., provides that a board of administration may adopt hurricane shutter specifications. It also provides that, where a board has directed that shutters be installed, members must pay to the association the proportionate share of the association's cost to install the shutters. To accommodate members who may have voluntarily installed shutters prior to the board installing them in the entire building, there are provisions whereby such members who have installed their own shutters will not be required to pay the proportionate cost of installing shutters on the other units in the association. This bill amends s. 718.112(5)(a), F.S., to provide for installation of code compliant impact glass windows as a form of hurricane protection, and provides that a member who installed his or her own code-compliant impact glass will not be required to pay the proportionate cost of installing the same in other units of the association.

¹ The specific statutes are: parts I and III of chapter 718; ss. 718.501, 617.0202, 617.0206, 617.0302-617.0304, 617.0501, 617.0505, 617.0801-617.0833, 617.0840-617.0843, 617.1622, and 617.2102, F.S.

Condominium Assessments; Foreclosure

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Under current law, an owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. As expected, a unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.²

This bill amends s. 718.116, F.S., to:

- Require a lender to pay all past due assessments upon the filing of a foreclosure case.
- Require a lender to pay up to 6 months assessments incurred during the foreclosure case.
- Give a lender a 50% credit on up to 6 months assessments if the lender will prepay those assessments at the time of filing the foreclosure case.

Condominium Association Election Disputes

Section 718.1255, F.S., creates an alternative dispute resolution program for disputes between condominium unit owners and condominium associations. The program is primarily funded through the annual fee paid by associations. The primary mechanism for dispute resolution is through nonbinding arbitration of disputes by arbitrators who are full-time employees of the Department of Business and Professional Regulation. There are also provisions for mediation.

The department's handling of arbitrations regarding elections matters has become somewhat troubling in recent years. In some instances, the arbitration is not resolved within the term of office of the director or directors in question, notwithstanding the direction in s. 718.1255(5), F.S., that elections disputes are to be handled on an expedited basis. The requirement to expedite does not apply to recall elections where the remaining term (which is the matter that is at issue) is even shorter than the term at issue in an election dispute. In the meantime, the disputed director or directors are making decisions that bind the association.

² See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis Within State's Condo and HOA Population*, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

This bill amends s. 718.1255(5), F.S., to require expedited arbitration and resolution of election and recall disputes. The bill:

- Increases the arbitration fee from \$50 to \$150
- Requires the hearing to be conducted within 15 days and to be conducted on the condominium property if facilities are available.
- Requires the directors to appear at the hearing with the original elections materials. If the board fails to appear with the materials, the arbitrator may summarily rule against the directors.
- Requires the arbitrator to make an oral ruling at the conclusion of the arbitration that immediately goes into effect.
- Prohibits the directors from making any extraordinary expense between the time of notice of the hearing and the hearing date.

Emergency Powers

Section 718.1265, F.S., gives the board of administration of condominium association very broad powers to deal with an emergency. For instance, the board can borrow, move money from reserves, meet without notice, evacuate the building, make emergency repairs, and the like. This bill amends the emergency powers provisions to provide that emergency powers may only be exercised during the term of the stated emergency unless more than 20% of the units are uninhabitable.

Regulation of Condominium Associations

Section 718.501, F.S., sets forth the regulatory authority of the Department of Business and Professional Regulation over condominium matters. After turnover of association control to the members, the department is limited to financial issues, elections, and unit owner access to records. This bill amends s. 718.501(1), F.S., to add that the department also has jurisdiction over a condominium association's failure to maintain common elements.

This bill also amends s. 718.501(1)(d), F.S., to add that the department must suspend the authority of a person to be an officer or director of any community association if the department finds that the person has intentionally falsified association records with the intent to conceal material facts from the division, the association, or unit owners.

This bill also amends s. 718.501(1)(d), F.S., to add that, should the department find that any person has derived an improper financial benefit from an association, the department may order the person to return the improper financial benefit to the association, plus reimburse the department for the cost of the investigation.

Ombudsman

The Condominium Ombudsman is a neutral resource for condominium unit owners and associations to turn to for help with condominium issues. One duty of the ombudsman is to attempt voluntary mediation of disputes between associations and unit owners when such disputes are not within the jurisdiction of the department. This bill amends the powers of the ombudsman at s. 718.5012(9), F.S., to add that the ombudsman may also attempt voluntary mediation of a dispute within the jurisdiction of the department where the department has declined to exercise its jurisdiction over the matter.

Community Association Living Study Council

The Community Association Living Study Council consists of seven members charged with the responsibility of reviewing community association laws and recommending changes. The council is to meet for up to 6 months every five years, commencing October, 2008. This bill amends s. 718.50151, F.S., to:

- Change the name to the Community Association Study Council.

- Provide that the Council will meet on a continuous basis. The existing members who will term out on April 1, 2009, are the initial members of the continuing Council.
- Prohibit lobbyists from being appointed to the Council.

Cooperative Law Update and Conforming Amendments

Cooperatives and condominiums are similar in how they are treated in the law, and they are essentially operated the same. There are some differences in terminology, for instance, the condominium unit owner is a cooperative shareholder. Cooperative law, however, has often not been amended to match condominium law. When cooperative law does not match condominium law, the public can get confused, management firms have difficulty in managing cooperatives, and the department has difficulty with enforcement. This bill amends many of the cooperative laws to match condominium law. Updates to cooperative law in ch. 719, F.S., to match current condominium law and condominium law as changed by this bill to include:

- Adopt condominium language on conspicuous type in disclosures.
- Adopt condominium law change about access to units.
- Adopt condominium language on intentional destruction of records.
- Adopt condominium language requiring most records to be kept for 7 years.
- Adopt condominium language penalizing intentional destruction of records.
- Adopt condominium disclosure exemption for Social Security numbers, driver license numbers, and other typical confidential info.
- Adopt condominium insurance changes and split of responsibility, as amended by this bill.
- Adopt condominium financial reporting requirements.
- Adopt condominium requirements related to director voting.
- Adopt condominium notice and reference to general nonprofit corporate law that provides that a director may be liable to the association for certain wrongs.
- Adopt condominium language on power to manage the property.
- Adopt condominium law change limiting borrowing of money.
- Adopt condominium language on title to property owned by the association.
- Adopt condominium language on the legal effects of the association buying a unit within the cooperative.
- Adopt condominium law change prohibiting political and limiting charitable expenditures.
- Adopt condominium law change on meeting times.
- Adopt condominium language requiring the board of directors place an item on the agenda if 20% of members petition.
- Adopt condominium law change in this bill requiring that a notice of a meeting on special assessments must give proposed cost and possible overruns, not estimated cost.

- Adopt condominium requirement that a unit owner meeting must be held within 45 miles of the association property.
- Adopt condominium law change in this bill regarding the terms of directors, namely that all directors are termed out at the next annual meeting, and thereafter the association must have one year terms (unless the association specifically vote for two year terms).
- Adopt condominium law requirement that an association of 11 or more units must follow the statutory election procedures and may not utilize special election procedures.
- Adopt condominium law change in this bill that requires two readings to amend a provision in the bylaws.
- Adopt condominium law limits on proxy questions to waive reserves, including the required warning that must be placed on the proxy form.
- Adopt condominium language allowing the association to transfer a portion of the common areas under limited circumstances.
- Adopt condominium language by which a director of the association is disqualified for being 90 days or more delinquent in assessments.
- Adopt condominium language, as amended by this bill, by which a director criminally charged with stealing from the association is suspended from office.
- Adopt current condominium requirements to be a director of the association, as amended by this bill. Requirements include: no felony record, must certify to reading law and documents, and after turnover only an owner may serve on the board.
- Adopt condominium law change limiting borrowing by the association.
- Adopt condominium language regarding appointment of a receiver.
- Adopt condominium language on hurricane shutters by which an association may install them but does not charge an owner for installation if the owner has previously installed compatible shutters at the owner's expense.
- Adopt condominium law, as changed by this bill, regarding lender liability for past due assessments and assessments during foreclosure.
- Adopt condominium law provision that the association may disapprove of a lease if the owner is delinquent.
- Adopt condominium language and statutory form for a shareholder to use in objecting to a claim of lien by the association.
- Adopt condominium language requiring an association to give 30 days notice before filing a lien against a shareholder.
- Adopt condominium language requiring an association to provide an estoppel certificate on demand and limiting the fees charged for an estoppel certificate.

- Amend cooperative law to provide that a cooperative association may seek regular assessments from a tenant if the owner is delinquent.³
- Adopt condominium language from s. 718.113, F.S., regarding maintenance of the common areas, the right of an owner to fly certain flags, hurricane shutters, regular inspections of the property, the right of an owner to display religious objects on the door of a unit, and the right of an association to place solar collectors in the common areas.
- Adopt condominium law from s. 718.117, F.S., providing for voluntary termination of a cooperative upon a supermajority vote of the shareholders, providing for distribution of the proceeds of the sale of the property to expenses of the sale and to shareholders.
- Adopt condominium law from s. 718.1224, F.S., prohibiting an association from prosecuting a Strategic Lawsuit Against Public Participation lawsuit, commonly referred to as a "SLAPP suit", against a shareholder of the association.
- Adopt condominium law from s. 718.1265, F.S., as amended by this bill, creating emergency powers for the board of directors of the cooperative.
- Adopt condominium law requiring turnover of association control should the developer file bankruptcy or fall into receivership.
- Adopt condominium law requiring a developer to create a turnover inspection report and give it to the new board of directors of the association.
- Adopt condominium law from s. 718.3025, F.S., creating limitations and requirements on management and maintenance contracts and agreements.
- Lowering to the condominium law threshold of 10 or more units the provisions that limit contracts of the association.
- Adopt condominium law limits and disclosure requirements that apply to contracts where a director of the association is an interested party and thereby has a conflict of interest.
- Adopt condominium law requirement that a director of the association, or a person residing the same household as a director, may not serve on any committee that has the power to fine a shareholder of the association.
- Adopt condominium law changes in s. 718.501, F.S., as amended by this bill, to the jurisdiction and enforcement authority of the Department of Business and Professional Regulation, including enforcement power over Community Association Managers, the power to remove a director, the power to issue an emergency cease and desist order, the power to initiate receivership, the requirement that the division enforce the requirement to provide access to the association's records, and the power to seek restitution for an improper benefit.
- Expand the authority and jurisdiction of the Condominium Ombudsman to assist cooperative shareholders and cooperative associations.
- Adopt condominium law requiring that a prospective purchasers from a nondeveloper seller must be given a governance form prepared by the Department of Business and Professional Regulation.

³ This requirement was amended out of the condominium section of the bill.

Homeowners Association Update

Homeowners associations have some similarities in management with cooperatives and condominiums. This bill amends some of the homeowners laws to match condominium and cooperative law. Updates to homeowners association law in ch. 720, F.S., to match current condominium law and condominium and cooperative law as changed by this bill include:

- Adopt limit on political and charitable contributions created in this bill.
- Adopt limit on borrowing created in this bill.
- Adopt condominium law limit on transfer fees.
- Amend flag display language to match.
- Adopt requirement to amend bylaws by owner vote on the issue of meeting time and place.

Homeowners Association Assessments; Foreclosure

A homeowners association must collect regular assessments from the parcel owners in order to pay for management, maintenance, insurance, and in some associations a reserve for anticipated future major expenses. Under current law, an owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. As expected, a parcel owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the house be sold to third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 720.3085(2)(c), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 12 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the parcel holders through increased regular assessments and may be passed on to the others by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving homeowners associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of homes in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in homeowners associations statewide.

Similar to the changes to condominium and cooperative law in this bill, this bill amends s. 720.3085, F.S., to:

- Require a lender to pay all past due assessments upon the filing of a foreclosure case.
- Require a lender to pay up to 24 months assessments incurred during the foreclosure case. (Note that this period was amended to 6 months in condominium and cooperative associations).
- Give a lender a 50% credit on up to 24 months assessments if the lender will prepay those assessments at the time of filing the foreclosure case.

Homeowners Association Study

This bill directs OPPAGA to study whether the state should regulate homeowners associations similar to how condominiums and cooperatives are currently regulated by the state. The study must be complete by January 1, 2010. To assist with the study, a mechanism for informational complaints is created.

B. SECTION DIRECTORY:

Section 1 amends s. 20.165, F.S., relating to the duties of the Department of Business and Professional Regulation.

Section 2 amends s. 468.436, F.S., relating to disciplinary proceedings for community association managers.

Section 3 creates s. 627.714, F.S., relating to required insurance coverage.

Section 4 amends s. 718.111, F.S., relating to condominium associations.

Section 5 amends s. 718.112, F.S., relating to condominium association bylaws.

Section 6 amends s. 718.113, F.S., relating to condominium association maintenance.

Section 7 amends s. 718.116, F.S., relating to condominium association assessments.

Section 8 amends s. 718.1255, F.S., relating to alternative dispute resolution in condominium associations.

Section 9 amends s. 718.1265, F.S., relating to condominium association emergency powers.

Section 10 amends s. 718.501, F.S., relating to regulation of condominium associations.

Section 11 amends s. 718.5012, F.S., relating to the condominium ombudsman.

Section 12 amends s. 718.50151, F.S., relating to Community Association Living Study Council.

Section 13 amends s. 719.103, F.S., relating to definitions applicable to regulation of cooperative associations.

Section 14 amends s. 719.104, F.S., relating to cooperative associations.

Section 15 amends s. 719.106, F.S., relating to cooperative association bylaws.

Section 16 repeals s. 719.1064, F.S., relating to appointment of a receiver of a cooperative association.

Section 17 amends s. 719.107, F.S., relating to cooperative association assessments.

Section 18 amends s. 719.108, F.S., relating to cooperative association assessments.

Section 19 creates s. 719.113, F.S., relating to cooperative association maintenance.

Section 20 creates s. 719.117, F.S., relating to termination of a cooperative association.

Section 21 creates s. 719.1224, F.S., prohibiting SLAPP suits by cooperative association.

Section 22 amends s. 719.1255, F.S., relating to cooperative association dispute resolution.

Section 23 creates s. 719.1265, F.S., relating to cooperative association emergency powers.

Section 24 amends s. 719.301, F.S., relating to transfer of control in a cooperative association.

Section 25 amends s. 719.3025, F.S., relating to cooperative association agreements for operation, maintenance or management of the association.

Section 26 amends s. 719.3026, F.S., relating to contracts and agreements of cooperative associations.

Section 27 amends s. 719.303, F.S., relating to obligations of cooperative shareholders.

Section 28 amends s. 719.501, F.S., relating to regulation of cooperative associations.

Section 29 creates s. 719.5011, F.S., relating to the ombudsman.

Section 30 amends s. 719.503, F.S., relating to disclosure prior to the sale of a cooperative unit.

Section 31 amends s. 720.303, F.S. relating to powers and duties of a homeowners association.

Section 32 amends s. 720.304, F.S., relating to rights of owners of a homeowners association.

Section 33 creates s. 720.3065, F.S., relating to meetings of a cooperative association.

Section 34 amends s. 720.3085, F.S., relating to homeowners association assessments.

Section 35 creates s. 720.314, F.S., relating to homeowners association parcel owner complaint filing.

Section 36 amends s. 721.16, F.S., relating to timeshare assessments.

Section 37 requires an OPPAGA study on homeowners associations.

Section 38 contains a specific appropriation related to Section 1.

Section 39 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Business and Professional Regulation estimates the following expenditures related to the bill as it was originally filed:

EXPENDITURES			
FUNDING SOURCE (LAND SALES, CONDOMINIUMS, MOBILE HOMES TRUST FUND)			
Recurring Budget	FY 2009-10	FY 2010-11	FY 2011-12
Salaries/Benefits # of FTE's (24 FTE)	1,280,213	1,280,213	1,280,213
Salary Rate (\$921,355)	0	0	0
Other Personal Services	0	0	0
Expenses	206,953	206,953	206,953
Contract Services	0	0	0
Other (Operation of motor vehicles/HR)	30,624	30,624	30,624
Subtotal	1,517,790	1,517,790	1,517,790

EXPENDITURES			
FUNDING SOURCE (LAND SALES, CONDOMINIUMS, MOBILE HOMES TRUST FUND)			
Non-Recurring Budget	FY 2009-10	FY 2010-11	FY 2011-12
Other Personal Services	0	0	0
Expense	173,294	0	0
Operating Capital Outlay	24,000	0	0
Other (Motor Vehicle purchase)	134,400	0	0
Subtotal	331,694	0	0

The Department of Business and Professional Regulation provided the following narratives regarding their fiscal estimate of the bill as originally filed:

1) Will this bill have a fiscal impact on the department? If so, explain.

Several provisions of this bill will have a fiscal impact on the department. The law enforcement staff provided for in Section 1 of the bill will require training and equipment. Changes to the community association manager law provided in Sections 2 and 29 of the bill will require additional resources. The changes to Division jurisdiction provided in Section 11 will require additional staff to handle the training and education programs. The Division has been able to staff these programs without an increase in staffing due to the reduction in regulation enacted in the 2008 Session.

The changes to the Community Association Study Council provided in Section 13 will require more resources as the Council life will be perpetual rather than the six month terms every five years currently provided in the law.

2) Will the bill affect workload, require additional positions, staffing, equipment, etc.? If so, explain. Provide # of FTEs and their classification, whether the positions will need to travel and how often, type of equipment, any one-time expenses, space requirements, etc.

This bill will affect workload requiring additional positions. Section 1 includes law enforcement staffing. While crime statistics are available from the Semiannual Uniform Crime Report, prepared by the FBI, there is no way to determine the extent of any criminal activity that may have taken place within condominiums. Based on an estimate of 1,000 complaints, the Division will need one Law Enforcement Lt. (Pay Plan 01/Pay Grade 055) , six Law Enforcement Investigators (Pay Plan 01/Pay Grade 054), and one Administrative Assistant II (Pay Plan 01/Pay Grade 018) , the Office of the General Counsel will need two attorneys (Pay Plan 08/Pay Grade 230)and one Administrative Assistant II Pay Plan 01/Pay Grade 018). The Law Enforcement positions require special equipment and training packages, acquisition of 7 specially equipped vehicles and vehicle maintenance.

Complaints are likely to increase by five percent, or 133 new complaints regarding the amendments provided in Section 6 of the bill, requiring one new Investigator Specialist II position (Pay Plan 01/Pay Grade 020).

Section 11 expands the Division's authority regarding falsified records and improper personal benefits gained through a condominium association that will increase the number of complaints by approximately 12 percent per year (320 complaints). The burden of proof will increase the complexity and length of prosecution of these cases. This workload will require four Investigative Specialist II positions (Pay Plan 01/Pay Grade 020) and two Attorneys (Pay Plan 08/Pay Grade 230) and one Administrative Assistant II (Pay Plan 01/Pay Grade 018). The condominium and cooperative laws require the Division to provide education and training to unit owners and board members. The Division performs this duty in three ways: we publish educational materials and manuals on our website, we review and approve educational materials submitted to the Division, and post information on the website to make them available to the public, and we conduct live classroom type education programs throughout the state. The Division will need to add three FTE Research Assistant positions (Pay Plan 01/Pay Grade

023) to handle education so that existing staff can absorb the workload increase related to extending the enforcement jurisdiction regarding unit owner controlled associations.

With over 800 cooperative associations throughout the state, the Ombudsman's office anticipates it will require two Regulatory Specialist III (Pay Plan 01/Page Grade 019) to receive and respond to inquiries by mail, e-mail, telephone, and facsimile; to provide training and education to the boards and shareholders; to process and handle petitions for election monitors, and to assist in resolution of disputes not handled by the Division.

The changes to the Community Association Study Council provided in Section 13 will require an additional \$19,000 annually for travel expenditures as the Council life will be perpetual rather than the six month term every five years currently provided in the law.

Summary: 24 new FTE with Recurring Expenditures of \$1,849,484 (\$1,517,790 Recurring, \$331,694 Non-recurring).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to require higher payments by mortgage lenders to condominium, cooperative and homeowners associations upon foreclosure of a unit or parcel in such associations. This requirement will provide a corresponding private benefit to owners of condominium units, cooperative shares, and parcels in a homeowners association.

D. FISCAL COMMENTS:

The fiscal estimate of the department assumes that all extra duties created by this bill will be fully funded and that they cannot be absorbed within current department resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At Line 3206, the bill references condominiums but should reference cooperatives.

The provisions of this bill regarding lender liability related to foreclosure were consistent between condominiums, cooperatives and homeowners associations. After amendment, the three are substantially different.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 24, 2009, the Civil Justice & Courts Policy Committee adopted a number of amendments to the bill, to:

- Change regulation of Community Association Managers to also provide for revocation of a license on the third time that a Community Association Manager commits the same offense.
- Specify that the \$2,000 special assessment coverage is excess coverage and that the date of loss is the date of the incident, not the date that the special assessment is established by the directors.
- Require that a condominium or cooperative association provide notice that it will be granting access to a unit, and requires that a director or employee of the association be present.
- Remove restrictions on transfer fees.
- Change the provision on insurance coverage for personal property to provide that a unit owner is responsible for all items within the boundaries of the unit.
- Restrict the time and place of meetings of a condominium or cooperative board of administration or a homeowners association board of directors, and require that the owners adopt a meeting time.
- Prohibit a condominium, cooperative or homeowners association from making political contributions and limiting an association in making charitable contributions.
- Remove a requirement that a notice of a condominium or cooperative meeting to discuss special assessments reveal the actual cost and substitute a requirement that the notice include the proposed cost and possible cost overruns.
- Require condominium association unit owner meetings to be held on-site if possible.
- Remove the transition rule for new staggered terms in condominium associations.
- Remove the meeting time limit applicable to meetings to amend the bylaws of a condominium association.
- Change the statutes that a newly elected or appointed director must read.
- Provide that the requirement that only unit owners may serve on a condominium board of administration does not apply to a timeshare condominium.
- Limit borrowing by a condominium, cooperative or homeowners association.
- Change the limit on lender liability for condominium assessments during a foreclosure from 24 months to six months.
- Remove the ability of a condominium association to collect rents directly from a tenant when the unit owner is delinquent in paying assessments.
- Require condominium election arbitration to be conducted within 15 days of request.
- Remove requirement that certain condominium associations employ a Community Association Manager.

- Remove provisions that would have greatly expanded the jurisdiction of the department over condominium associations.
- Add that the department has jurisdiction to investigate the failure of a condominium association to maintain common elements.
- Limit transfer fees charged by a homeowners association.
- Add homeowners association informational complaint.
- Provide an appropriation for the law enforcement officers for the department.

The bill was then reported favorably with a committee substitute.